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ABSTRACT

Recommendations and regulations regarding the zoning of child development day care programs are discussed. Zoning in general is discussed, as is the treatment of child development day care in zoning ordinance, the background of program planning, modular housing, the impelmentation of zoning, and model provisions regarding characteristics of facilities and zoning criteria. A list of organizations concerned with the adoption of zoning regulations for day care and a list of additional publications are provided. (KM)

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Zoning for Day Care (from Models for Day Care Licensing

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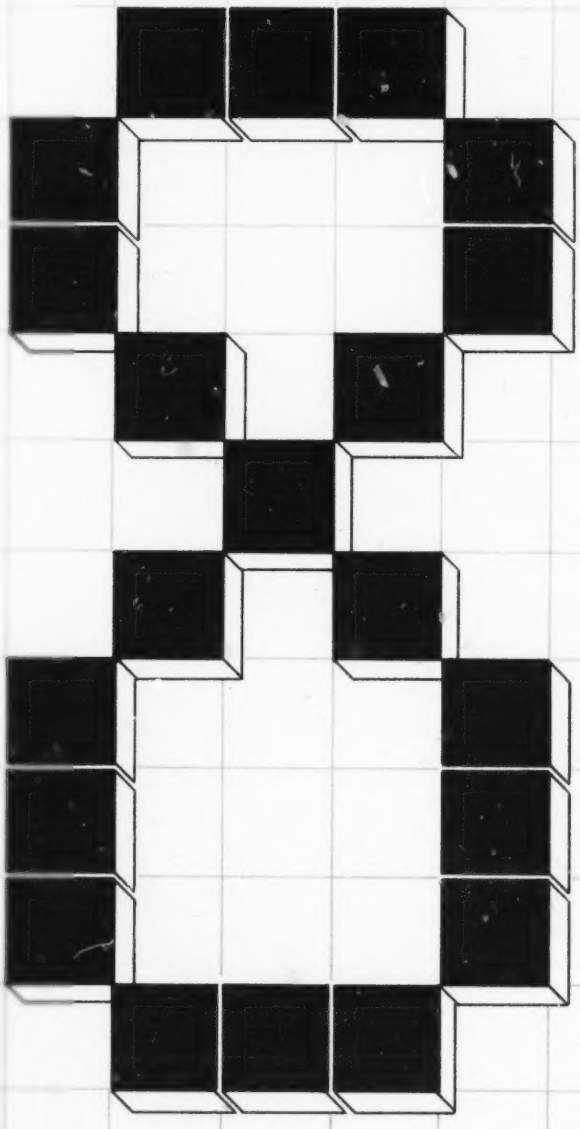

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FROM

MODELS FOR DAY CARE LICENSING

Report of Task Forces to the
Office of Child Development
Department of Health, Education and Welfare

OCD Manager: E. Dollie Lynch
OEO Manager: Claude Kinard, III
May 26, 1972

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INTRODUCTION TO THE CHILD CARE BULLETIN SERIES

Today, there is no longer a lack of materials on Day Care and Child Development. On the contrary, there is an impressive amount of materials now in print. Unfortunately, these publications are often inaccessible, or when they are available, they are frequently voluminous. Research and information retrieval then becomes an onerous task. There is absolutely no need to burden people who are involved in child care with difficulties of procuring inaccessible materials or with materials of unmanageable proportions.

There is a need for concise, readily available materials. These Bulletins are a response to that need. They synopsize a portion of the child care resources presently being developed and disseminated by the Day Care and Child Development Council of America, Inc., under Office of Economic Opportunity Grant No. 30079.

Each Bulletin, though developed independently, is closely interrelated with the others, by means of cross-references found in the text. The references to other Bulletins are provided with the intent of minimizing the built-in bias that is present in any study. We hope that this method will provide the reader with a truer perspective of current critical issues.

For the discriminating reader who requires more specific information, the complete, original publication from which this Bulletin was gleaned may be consulted in any of the following repositories:

- The fifty State Libraries
- The fifty State Offices of Economic Opportunity
- The ten Federal Regional Committee Headquarters
- The Library of Congress
- and the Day Care and Child Development Council of America, Inc., Library.

The perspectives and conclusions found in this Bulletin do not necessarily represent the policies of either the Office of Economic Opportunity/Office of Program Development or the Day Care and Child Development Council of America, Inc.

We wish to express our gratitude to the Council Board's Advisory Committee, Mrs. Mary Dublin Keyserling, Dr. Leonard Mestas, and Mrs. Gwen Morgan, for their guidance and review in the preparation of these bulletins.

THE EDITORS
November, 1972

PREFACE

From Regulations of Early Childhood Programs, by Gwen G. Morgan*

Cities and towns regulate day care through the use of zoning restrictions. These take the form of codes which are adopted by action of cities and towns. Theoretically, cities and towns are creatures of the states, but the tradition of home rule is very strong. The legal base for zoning has nothing to do with state licensing laws: it lies in municipal powers, derived from the states, to plan the development of their communities.

Present practice in zoning restricts day care to certain areas specifically zoned. However, day care is likely to be needed in every part of a city. If the location is not zoned to allow day care, a variance to the code will have to be granted, requiring a public hearing. A second obstacle in present practice is that the day care operator may be required to obtain a special use permit, which requires a further time delay. A third obstacle is actual physical requirements which may be imposed, such as requirements for parking spaces, and lot size, some of which may be more stringent than licensing requirements, and may, in fact, be unrealistic.

It is interesting to examine where day care is permitted in zoning codes as an indication of the way local planning boards conceptualize the service. It is usually zoned out of residential neighborhoods. Apparently day care is assumed to be a form of industry which should not co-exist with residential housing. On the other hand, day care is also sometimes specifically zoned out of those parts of the city where most business is located, since young children do not "belong" there.

Both children and cities are suffering from these policies, since the wealthy families flee the city to suburban areas offering more for children, and those without the money to flee are forced to bring up their children with severe limitations on the opportunities for a variety of experiences. Both groups of children are cut off from the adult world very effectively by zoning policies.

The zoning policies in regard to day care stem from a local view, among municipal planning people, that day care is a "problem use" to be permitted only under certain careful conditions. Therefore zoning tends to, and apparently intends to, inhibit the service rather than facilitate it. A report of a national task force on day care licensing recommended that this zoning philosophy must be changed, and that day care, a needed community service, should be planned as a desirable public objective. Regardless of auspices, day care facilities should be considered to be community facilities, rather than a proprietary use. As in licensing, they should be considered private with a public purpose. Note that a task force on day care licensing investigated issues in zoning; however, zoning is not licensing, and stems from a different statutory base.

The task force report did not find day care to be a "problem use" in terms of its impact on a neighborhood. For zoning purposes, they suggested that day care centers should be considered in the same class of use as a very small school, and should be permitted "as a matter of right" where needed just as schools are permitted. In the case of family day care homes, the task force suggested that this service is in the same class of use as a home in which people live, and should be permitted wherever such homes are permitted, without requiring a variance.

* Published by DCCDCA, 1972, pp. 20-24.

These changed ways of looking at day care in zoning will require changes in current philosophy, practice and law. At present, the better a job of zoning and planning a city is doing, the more obstacles it is creating for the care of its children. Any solution to this problem will lie in passing state legislation overriding local zoning codes for day care or in reaching local planning people with educational materials through their professional organizations, meeting with local citizens, and the state and federal agencies to which they relate, to bring about changes in local zoning regulations and philosophy. The task force recommended the latter course of action.

If day care services are to be treated as needed community services, it then becomes the responsibility of some community agency - whether the planning department or some other agency with the cooperation of the planning department - to engage in comprehensive planning for day care services, to assure that programs are anticipated and can be distributed according to an anticipated pattern of need. Such land use planning is counter to present practice in both the planning field and in the day care field. Planners have not become involved in day care issues. Day care people have not often planned services in relation to overall community needs, instead operating as if each fragmented day care service were a world unto itself.

A MODEL CODE FOR DAY CARE LICENSING

ZONING

DEVELOPED AS PART OF AN OVERALL
DAY CARE LICENSING STUDY
UNDER THE DIRECTION OF SAM J. GRANATO
CHIEF, DAY CARE OFFICE, OFFICE OF CHILD DEVELOPMENT

TASK FORCE ON ZONING

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I. INTRODUCTION: ZONING FOR DAY CARE

Zoning is a legal means of regulating the use of land and the buildings on the land. It works through regulations that restrict the kind of uses that can take place on a given piece of land and establishes standards for the size of yards and buildings.

Zoning is a local prerogative. It takes place under state enabling legislation, but neither the state, nor the federal government, can impose zoning on a locality. Because it is a local power, zoning varies enormously from one locality to another. Therefore, it is impossible to write a model zoning code that could be adopted widely.

Zoning was originally based on protection of the public health, welfare, and safety. However, it has also been used—and is still being used in many places—to exclude people on the basis of race or income. Although such exclusionary zoning is increasingly being ruled illegal, it is still a factor. Any such approach to excluding child development day care programs is not appropriate.

Finally, it should be noted that zoning can be used only for regulating the few factors mentioned previously, that is, use of land and buildings, size of buildings and yards, and such subsidiary matters as parking, fences, etc. Many older zoning codes contain material that regulates building construction, fire and safety standards. These are not a proper use of zoning and should be eliminated.

Treatment of Child Development Day Care in Zoning Ordinance

Two exhibits are offered:

1. Characteristics of Child Development Day Care Facilities, and
2. Recommended Zoning Criteria for Child Development Day Care Uses.

Two basic assumptions underlie the presentation:

1. The establishment of child development day care services and facilities, wherever there is need, is a necessary public objective, and
2. Child development day care programs should be treated as community facilities (not as proprietary uses restricted to commercial zones).

For purposes of the zoning ordinance, location of child development day care facilities should be considered comparable to elementary schools; children are present for a specific period of time under the supervision of adult staff. There is a greater degree of supervision in a day care facility, and in the majority of them there are fewer children than in an elementary school. Consequently, there will be less likelihood of negative effects upon neighboring property.

Treating child development day care uses as community facilities means that day care should be permitted to locate in any zoning district as long as need has been demonstrated, licensing requirements have been met, and no physical hazard can be reasonably anticipated. Treating day care facilities in the same manner as elementary schools means that they could be established without the lengthy processing time involved in obtaining a conditional or special use permit.

The model provisions are flexible for two reasons: life styles vary from community to community, and differences of scale and need occur in developed and developing areas.

Urban and suburban life styles are different. Since zoning is a local prerogative, it must be recognized that these differing community life styles will influence the location of community facilities. In urban areas the location of child development day care facilities might very well depend upon accessible public transportation or need to be within walking distance of families using the facility. In suburban areas, the location of day care facilities may be more related to private car transportation.

Related to differing community life styles are the concepts of developed and developing areas as described in the *Douglas Commission Report*.[1] In developed or redeveloping areas a mixture of protection and stimulation by land-use controls is highly desirable. Child development day care might be considered as a stimulus to the existing neighborhood. Hence, a flexible approach to zoning standards is desirable, since optimum conditions often do not exist in built-up or redeveloping areas.

In contrast, developing areas can apply the highest standards to new development, whether it be for small-scale planned unit development, average subdivision growth, or massive new town projects. Flexible zoning standards would allow more than minimal standards where possible, but would not deny the establishment of child development day care facilities where need exists.

Three problem areas relating to zoning for child development day care may be identified. First, zoning ordinances often restrict facilities to a few areas of the community; in other words, permit them only in a few zoning districts. A sponsor of a prospective day care program may discover that such facilities are not permitted where need for day care services has been determined.

If the child development day care facility *is* permitted, the prospective sponsor may be confronted with a second zoning hurdle—the securing of a conditional or special use permit. As documented in the interim report, *State Day Care Licensing Requirements* prepared for the Office of Child Development of HEW, the time delay for such a permit application averages sixty days.

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See Child Care Bulletin No. 4, Subject: A Survey of State Day Care Licensing Requirements (Conserco).

A third obstacle involves standards required in the zoning ordinance which are too rigid or which do not agree with day care licensing standards. Typical of these unreasonable standards is an excessive minimum lot size requirement or the requirement of too large an outside play area.

These zoning obstacles lead to increased costs both in time and fees. These costs are a burden to the sponsor of nonprofit child development day care programs and to the proprietary operator whose profit-making ability has yet to be proved.

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1 *Building the American City,* report of the National Commission on Urban Problems to the Congress and to the President of the United States, December 1968.

Another difficulty is encountered as child development day care facilities are denied to a community by restrictive zoning when the need for such facilities is growing rapidly within that community. As larger numbers of women enter the work force, more families find it desirable to have available day care services outside of the home. Facilities for these services should be available.

Where sponsors of child development day care programs or proprietary operators must apply for a zoning permit and appear before local zoning authorities, the following publications and references are suggested:

Publications:

1. *A Guide to the Philadelphia Zoning Ordinance*, 1970, Citizens Council on City Planning, 1601 Walnut Street, Philadelphia, Pennsylvania 19103. Single copies $.60.
2. *What is Zoning*?., Mayor's Office of Inquiry and Information, Room 101, City Hall, Chicago, Illinois 60606.
3. *The Citizen's Guide to Zoning*, by Herbert Smith, Chandler-Davis Publishing Co., P. O. Box 36, West Trenton, New Jersey, 08628, 1965, 182 pp. $2.50.
4. *Public Hearings, Controversy and the Written Response*, PAS 240, American Society of Planning Officials, 1313 East 60th St., Chicago, Illinois 60637. $5.

References:

American Society of Planning Officials
1313 East 60th Street
Chicago, Illinois 60637

Background

The emerging concept of child development day care programs assumes that services and facilities will meet community objectives in much the same manner as other, more familiar community facilities, like schools. The provisions of community facilities is best handled by a process that comprehensively involves community representatives, the staff of the planning commission, and other local officials who directly or indirectly influence the number, quality, location, funding, and timing of such resources. The establishment of need, the adoption of criteria, the choice of location, and the timing of the start of programs are the critical factors involved in the process. Where local conditions require, the technical input for planning community facilities may be provided by a group, or groups, other than the planning agency, but the community input must always be provided; and it is wise to ensure the participation of the local officials.

No matter what the details of achieving comprehensive planning for child development day care programs, such comprehensive planning must occur. "Comprehensive," in this context, means consideration of dysfunctional as well as normal children, the age group from birth through age 17, funding from all available sources, relationship of day care to other related service programs, operation of programs by every potential sponsor (public, nonprofit and proprietary), accommodation of alternative physical facilities, etc. Comprehensive child development day care facilities and services are necessary and must be a priority in community planning.

Modular Housing

The development of factory built housing has implications for the field of child development day care since it is possible that modular units could receive widespread use as such facilities. In an authoritative study published in September 1971 by the American Society of Planning Officials entitled *Regulation of Modular Housing—Including Mobile Homes,* the relationship between zoning and factory built housing is spelled out. Author of the report, Fred Bair, finds that the same zoning regulations that govern tradition housing should apply to modular housing. Eleven states (California, Georgia, Hawaii, Mississippi, Maryland, New Mexico, North Carolina, South Carolina, Tennessee, Virginia and Washington) have enacted legislation concerning factory-built housing and have set up agencies to develop standards. These standards will, for the most part, affect the building code. In each of these states the state regulation will have force of law at the local level. However, a statement in the zoning ordinance to ensure compliance of such housing with the district regulations is appropriate, if the use of factory built housing is anticipated.

Conclusion

From a strictly family concern in the past, positive nurture of children is now viewed as a public objective. This concern applies to children of all ages and from families at all income levels. Therefore, child development day care facilities must be permitted by the zoning ordinance, not limited. Licensing requirements should be accepted as ensuring the health, safety, and welfare of children attending day care facilities; they should not be duplicated in the zoning ordinance.

Zoning for Child Development Day Care Facilities--Implementation

At the present time, there are no uniform zoning codes in the United States. Since zoning is a local responsibility and function, it is not feasible to attempt to develop a model zoning code. Therefore, the Task Force on Zoning has provided this background paper on child development day care facilities, a description of facility characteristics, and criteria for establishing zoning provisions in the local ordinance. This description and these criteria should be considered as strong recommendations intended to achieve the same basic objective as model code provisions. We believe this type of material will prove to be most helpful to those persons responsible for local zoning.

The material contained in this paper concerning zoning for child development day care needs to be distributed to and understood by the widest possible spectrum of the community including officials responsible for the zoning process, sponsors, and proprietary operators of day care programs, consumers of such services, and those responsible for the licensing function. (These officials may include members or staff of one or more of the following: zoning boards, planning commissions, city and county councils, and municipal, county and regional planning agencies.)

The following professional, social, and civic organizations and their respective publications have been identified as those groups most likely to be concerned with the adoption of zoning regulations for day care:

Organizations

American Society of Planning Officials
American Institute of Planners
American Institute of Architects
National Association of County Planning Agencies
National Institute of Municipal Law Officers
International City Management Association
National Association of Housing and Renewal Officials
Council of Planning Librarians
National Association of Home Builders
League of Women Voters
Bank Street College of Education—Day Care Division
Local parent groups concerned with development of day care
National Urban Coalition
National Urban League
Day Care and Child Development Council of America
Association of Early Childhood Education
National Association of Negro Women
Women in Community Service
Extension services—Department of Agriculture
Suburban Action Institute
American Association of University Women
Neighborhood organizations
National Association for the Advancement of Colored People
Southern Christian Leadership Conference
National Organization of Women
Office of the Commonwealth of Puerto Rice - New York City
ASPIRA
Unions involved with day care
Any appropriate minority organizations
American Friends Service Committee
Public Works Association
Public Administration
Building Officials Conference of America
Public Welfare Association
Association of Consulting Planners
Child Welfare League
Federal Clearinghouse of Scientific and Technical Information
The Urban Affairs Reporter
National Service to Regional Councils
Local Day Care Councils and Associations
Center for Community Change

Additional Publications

Any federal department publication such as the HUD Newsletter (Publications from Agriculture; Health, Education and Welfare; Labor should be included).

State, municipal journals such as *Western Cities* and *Minnesota Municipalities*

Recommendations for Implementation

1. That OCD (the Office of Child Development, Department of Health, Education, and Welfare) disseminate the material developed by the zoning task

force with an accompanying explanatory abstract and resource list to the above mentioned organizations.

2. That OCD to the extent possible sponsor meetings to be attended by representatives of the above organizations to further explain and promote zoning for child development. (Since the majority of national organizations have representatives in Washington, D. C. it is suggested that at least one meeting be scheduled there.)
3. That OCD use the opportunity of the regional meetings to reach as many local officials as possible. Lists of these officials are available from such organizations as AIP, ASPO, AIA and ICMA.
4. That OCD ensure through an information process a knowledge and understanding of child development zoning at the child development licensing agency level, and where appropriate at the local agency level.
5. That OCD recognize the need for information on child development and where it is appropriately located in the communities at the popular level; that it seek to disseminate information on child development and zoning through popular publications. A sampling of those publications might include the following: *Good Housekeeping, Ladies Home Journal, Essence, Women's Day.* The readership of such publications probably needs to receive information on child development and the possibilities of location as much as the local officials involved in the zoning process.

II. MODEL ZONING PROVISIONS FOR CHILD DEVELOPMENT DAY CARE, WITH COMMENTARY

DEFINITIONS

Regulation:
For the purposes of this model, the facilities described, furnishing services for less than twenty-four hours per day and with parent or guardian not present, which promote the appropriate growth and development of children, shall be defined as follows:

1. A "family day care home" is a private residence which receives one or more, but fewer than seven children.
2. A "group day care home" is a private residence which receives seven through twelve children.
3. A "day care center" is (a) a place which receives children in a structure other than a private residence; and (b) *any place,* including a private residence, which receives more than twelve children.

Commentary:
Definitions are an important part of zoning ordinances. These definitions are based on the number of children served and the type of facility in which the day care is provided. The terms are defined in order to simplify, clarify, and make the ordinance more understandable.

Exhibit A, *Characteristics of Child Development Day Care Facilities,* describes the various levels of land use association with each type of facility.

Exhibit B, *Recommended Zoning Criteria,* describes items that should be considered by zoning officials in developing day care provisions for local ordinances.

EXHIBIT A

CHARACTERISTICS OF CHILD DEVELOPMENT DAY CARE FACILITIES

CHILD DEVELOPMENT DAY CARE FACILITY	A. DESCRIPTION OF USE	B. PERFORMANCE CHARACTERISTICS TRAFFIC GENERATION OTHER NUISANCES (I.E., NOISE)	C. EXTERIOR ENVIRONMENTAL REQUIREMENTS
1. Family Day Care Home	Private Residence 1-6 Children	Same as Typical Residence	Fenced Play Space or Park Access per Licensing Requirements
2. Group Day Care Home	Private Residence 7-12 Children	No significant increase over Typical Residence	Fenced Play Space or Park Access per Licensing Requirements
3. Day Care Center	(1) Structure other than Private Residence	Comparable to Elementary School with same number of Children	Outdoor Play Area *(Fenced) Access to Park, Roof or other Usable Area per Licensing Requirements. Off street loading & delivery. Parking: Per Local Standards for Similar use. Accessibility for Fire and Other Emergency Vehicles.

* ADEQUATELY BUFFERED FROM ABUTTING USES.

EXHIBIT A — COMMENTARY:

1. FAMILY DAY CARE HOME

   A. Family day care home requires a private residence setting to maintain home atmosphere.

   B. Small number of children creates no problem.

   C. Play space required by licensing can usually be provided by residential yards in suburban areas or by roof area or public park accessibility in urban situations. Availability of safe and adequate play space will in large part determine the type and location of such space.

2. GROUP DAY CARE HOME:

   (A.-C.) Additional child load will require larger residence and play space than Family Day Care Home.

3. DAY CARE CENTER:

   A. Typical residence does not provide adequate facilities for more than twelve children. Most day care centers normally accommodate between thirty and sixty children.

   B. Visible and audible activities of a day care center closely parallel those of a small elementary school.

   C. Day care center requirements from a community standpoint also are closely similar to a small elementary school.

Suggested off-street parking standards for non-urban situations are:

1 space per 2 staff members
1 space per 10 children

When space is available, it is desirable to provide buffer distance between the play area and the property line. However, a perimeter wall may serve in lieu of this buffer.

EXHIBIT B

RECOMMENDED ZONING CRITERIA

CHILD DEVELOPMENT DAY CARE FACILITY	A. ZONING DISTRICT	B. LOT-YARD-SIGNS	C. PLAY SPACE	D. OUTDOOR PLAY ACTIVITIES	E. OFF-STREET PARKING & LOADING	F. LICENSING REQUIRE-MENTS
1. Family Day Care Home	All Residential districts in private residence	Same regulations as district in which located	Must meet state and/or local licensing standards	Within fenced area or accessible park: limited to 8 a.m.-8 p.m.	Same regulation for similar use in district in which located	Must meet state and/or local standards
2. Group Day Care Home	↓	↓	↓	↓	↓	↓
3. Day Care Center	Any district except heavy industrial or similar high-hazard district.*	↓	(Buffers must be provided.)	↓	↓	↓

* Conditional permit required

EXHIBIT B — COMMENTARY:

1. FAMILY DAY CARE HOME:

   A. Family day care homes are necessary in all types of residential areas to meet the need for child development day care programs. Family day care homes require a private residence setting to maintain home atmosphere.

2. GROUP DAY CARE HOME:

   A. Comments same as for family day care home above.

3. DAY CARE CENTER:

   A. Day care centers should be permitted in every zoning district except those in which hazards may be experienced.

   B. In zones where hazards may be anticipated (industrial) day care centers should be allowed by conditional permit that will ensure the health, safety and welfare of the children involved.

   C. When space is available, it is desirable to provide buffer distance between the play area and the property line. However, a perimeter wall may serve in lieu of this buffer.